

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN CARTIER,	)	4:08CV3162
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
NEMAHA COUNTY JAIL,	)	
	)	
Respondent.	)	

Petitioner has filed a petition for writ of habeas corpus under [28 U.S.C. § 2254](#), an application to proceed in forma pauperis, and copies of his institutional trust account statement.

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). The court has reviewed the application to proceed in forma pauperis pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#). (The court recognizes that the provisions of [28 U.S.C. § 1915\(b\)](#) do not apply to habeas cases. See [Malave v. Hedrick](#), 271 F.3d 1139, 1139-40 (8th Cir. 2001).) Because Petitioner's trust account statement shows that Petitioner had an average monthly balance of \$100 or more in Petitioner's account for the six-month period immediately preceding the filing of the petition, the court concludes that Petitioner must be required to pay the \$5.00 filing fee because Petitioner has the financial ability to do so. See [28 U.S.C. § 1915\(a\)](#).

IT IS THEREFORE ORDERED that:

1. Petitioner's application to proceed in forma pauperis (filing no. [4](#)) is denied.

2. Petitioner is granted until November 24, 2008, to pay the \$5.00 filing fee. Petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice.
3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: November 24, 2008: deadline for Petitioner to pay \$5.00 filing fee.

October 24, 2008.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge